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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE JOAQUIN GUZMAN,

Defendant and Appellant.

G045649

(Super. Ct. No. 08NF1578)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, William R. Froeberg, Judge. Affirmed.

Barbara A. Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Senior Assistant Attorney General, Steven T. Oetting and Tami Falkenstein Hennick, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Jose Joaquin Guzman argues there is insufficient evidence to support his conviction for attempted murder. We disagree and affirm the judgment.

FACTS

One evening around 10 o'clock, appellant rode his bike to a Del Taco in Anaheim and entered the restaurant through the rear entrance. There were no customers inside at the time, but manager Edith Gonzalez was cleaning tables in the back of the restaurant. She recognized appellant as a frequent customer, exchanged greetings with him and then went about her cleaning. However, appellant wasn't there to eat. Instead, he approached Gonzalez from behind, restrained her with his left arm and began stabbing her with a small folding knife. Gonzalez struggled to escape, but appellant stabbed her twice each in the chest and shoulder, thrice in the back and once in the forearm before finally letting her go. Bleeding profusely, Gonzalez hobbled to her office and summoned help.

Appellant proceeded to the front of the restaurant and hopped over the front counter. There, he encountered two cashiers, neither of whom was aware of what had just happened to Gonzalez. Holding the knife at his side, appellant told the first cashier, "Give me the money and I won't hurt you." He then opened her cash register and took the money. At that point, the second cashier opened her register, but appellant jumped back over the counter, ran out the rear exit and fled on his bicycle.

Gonzalez was transported to the hospital, where she received stitches for her wounds. She remained in the hospital for observation overnight and was released the following day.

In the wake of the stabbing, Anaheim Police Sergeant Dennis Briggs searched the surrounding area but was unable to find appellant. He then went to the restaurant to assist in the investigation. While he was interviewing witnesses in the parking lot, appellant suddenly appeared on his bicycle. Briggs told him to stop, and he complied. He then got off his bike and began walking towards Briggs with his hands

tucked inside his pockets. Briggs drew his gun and ordered appellant to put his hands in the air. When he did, Briggs noticed he was holding cash in one hand and a pair of pocketknives in the other. Briggs handcuffed appellant and took him into custody. He found a third knife on appellant when he searched him incident to arrest.

About an hour later, appellant was interviewed by Sergeant James Rodriguez at the Anaheim Police Station. Appellant admitted stabbing Gonzalez and robbing the restaurant. He even asked for a pen and paper and diagramed where inside the restaurant he committed his crimes. When Rodriguez asked him if he was sorry, appellant replied, "Yeah, for supposedly what I did." Although Rodriguez asked him several times, appellant never explained why he stabbed Gonzalez. However, he did say he was not surprised about what he had done. He said he returned to the scene afterwards because the stabbing involved a woman and all he got in the robbery was "chump change."

Appellant was charged with attempted premeditated murder and second degree robbery. It was also alleged he personally used a deadly weapon and inflicted great bodily injury. During deliberations, the jury asked to review Rodriguez's testimony and requested a more detailed definition of the term "intent." The court provided the jurors with a transcript of Rodriguez's testimony and instructed them to use the ordinary definition of intent. However, the jurors subsequently reported they were deadlocked at 8-4 and asked if they could find appellant guilty of a lesser offense than attempted murder. The judge told them no, and a short time later they returned their verdict. They found appellant guilty as charged, except that they found he did not act with premeditation. Thereupon, the court sentenced appellant to 11 years and 4 months in prison.

DISCUSSION

Appellant contends there is insufficient evidence to support the jury's finding he specifically intended to kill Gonzalez. We disagree.

In reviewing the sufficiency of the evidence to support a criminal conviction, we review the entire record “to determine whether it discloses substantial evidence — that is, evidence that is reasonable, credible, and of solid value — such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ [Citation.]” (*People v. Stuedemann* (2007) 156 Cal.App.4th 1, 5.) In so doing, we presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.)

“The same standard applies when the conviction rests primarily on circumstantial evidence. [Citation.] Although it is the jury’s duty to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court that must be convinced of the defendant’s guilt beyond a reasonable doubt. [Citation.] “If the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. [Citation.]” [Citation.]” (*People v. Kraft, supra*, 23 Cal.4th at pp. 1053-1054.)

To support a conviction for attempted murder, the prosecution must prove the defendant specifically intended to kill the victim. (*People v. Smith* (2005) 37 Cal.4th 733, 739.) Because “[o]ne who intentionally attempts to kill another does not often declare his state of mind either before, at, or after the moment he” attacks, his intent must usually be derived from the circumstances surrounding the attack. (*People v. Lashley* (1991) 1 Cal.App.4th 938, 945-946.) In this case, the circumstances surrounding the attack strongly suggest appellant possessed the requisite intent to kill.

Upon entering the restaurant, appellant forcibly restrained Gonzalez and stabbed her eight times with a knife. Although the knife was not very big (one of the cashiers described it as being “about the size of a hand length”), repeatedly striking an unarmed and defenseless victim with a deadly weapon is strong evidence of murderous

intent. (*People v. Avila* (2009) 46 Cal.4th 680, 701-702; *People v. Gonzalez* (2005) 126 Cal.App.4th 1539, 1552 [appellant's intent to kill "was established by the evidence of his unprovoked attack that rendered the unarmed victim prone and defenseless as appellant repeatedly stabbed him."].)

Moreover, during the course of the attack, appellant stabbed Gonzalez twice in the chest and three times in the back. Because appellant's knife penetrated areas of Gonzalez's body where her vital organs are located, the jury could reasonably infer he intended to kill, as opposed to merely wound, her. (*People v. Bolden* (2002) 29 Cal.4th 515, 561 [stabbing victim in the chest was indicative of intent to kill]; *People v. Moore* (2002) 96 Cal.App.4th 1105, 1114 [stabbing victim in the abdomen was indicative of intent to kill].)

It is true that appellant never told the police *why* he stabbed Gonzalez. However, the prosecution was not required to establish appellant's motive to obtain a conviction. (CALCRIM No. 370.) And it seems rather revealing that immediately after stabbing Gonzalez, appellant went to the front of the restaurant and robbed one of the cashiers. This suggests he planned to rob the restaurant, and he tried to kill Gonzalez because he viewed her as an impediment to that plan. While other explanations are possible, we must remember the intent to kill may properly be inferred from the purposeful "use of a lethal weapon with lethal force . . . even if the act was done without advance consideration and only to eliminate a momentary obstacle or annoyance." (*People v. Arias* (1996) 13 Cal.4th 92, 162.)

Appellant admits the court was correct in instructing the jury it could not convict him of a lesser offense than attempted murder. Nonetheless, because this effectively forced the jurors into an "all or nothing" choice between attempted murder and acquittal, appellant fears the jurors may have chosen to convict him, even if they were not convinced beyond a reasonable doubt of his guilt. This is sheer speculation. And since, as appellant concedes, no instructional error occurred, our sole task is to

determine whether there is sufficient evidence to support the jury's verdict. For the reasons explained above, we believe there is. We are, therefore, powerless to disturb the judgment.

DISPOSITION

The judgment is affirmed.

BEDSWORTH, J.

WE CONCUR:

O'LEARY, P. J.

FYBEL, J.